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INTERIOR DEPARTMENT,

APPENDIX 1,

— TO —

SURVEYOR GENERAL'S REPORT.

A BRIEF HISTORY

OF LAND TITLES

IN THE HAWAIIAN KINGDOM.

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A BRIEF HISTORY OF LAND TITLES IN THE HAWAIIAN KINGDOM.

The time seems to have come for a more complete account of the Government Survey than has yet been published, especially when it is considered that only one of the annual reports has ever been printed.

But in order to convey an adequate idea of the condition of land titles which made the survey necessary, and of the peculiar difficulties to be overcome, as well as to supply reliable information on a subject of practical interest to every landowner, it seems best to give a brief preliminary sketch of the history of the original Land Titles in this Kingdom.

The ancient system of land titles in the Hawaiian Islands was entirely different from that of *tribal* ownership prevailing in New Zealand, and from the village or *communal* system of Samoa, but bore a remarkable resemblance to the feudal system that prevailed in Europe during the Middle Ages. Although this system of land tenure was radically changed by the peaceful and beneficent revolution, which took place during the reign of Kamehameha III., yet the *ancient subdivisions* of land remain unchanged to the present day.

ANCIENT SUBDIVISIONS OF LAND.

This branch of the subject has been admirably treated by Mr. C. J. Lyons in the "Islander," published in 1875.

In the first place, each island was divided into several *Moku* or Districts, of which there are six in the Island of W.K.

Hawaii, and the same number in Oahu. There is a district called Kona on the lee side, and one called Koolau on the windward side of almost every island. On Maui there are some sub-districts called *Okanas*, of which there are five in the Hana district, while Lahaina is termed a *Kalana*.

The next subdivision of land below the *Moku* is the *Ahupuaa*, which has been termed the *unit* of land in the Hawaiian system. Its name, as explained by Mr. Lyons, "is derived from the *Ahu* or altar, which was erected at the point where the boundary of the land was intersected by the main road *alaloa*, which encircled each of the islands. Upon this altar at the annual progress of the *akua makahiki*, (i. e. year god), Lonomakua, was deposited the tax paid by the land whose boundary it marked, and also an image of a hog, *puaa*, carved out of kukui wood and stained with red ochre."

The typical Ahupuaa is a long narrow strip, extending from the sea to the mountain, so that its chief may have his share of all the various products of the *uka* or mountain region, the cultivated land, and the *kai* or sea. On the windward sides of the islands each valley generally constitutes a distinct Ahupuaa. On East Maui the principal lands all radiate from a large rock on the northeast brink of the crater of Haleakala, called Palaha. Eight ahupuaas, one in each district of East Maui meet at this rock.

The Ahupuaas are extremely unequal. In several districts a few larger Ahupuaas, widening as they extend inland, cut off all the smaller lands and take the whole mountain to themselves. The same lands generally monopolized the deep sea fisheries, leaving to the smaller Ahupuaas only the fishery along their shores, where the water was not more than five feet deep.

On Maui the lands of Waikapu and Wailuku appropriated almost the whole of the isthmus, so as to cut off half of the lands in the district of Kula from access to the sea. These

two Ahupuaas together with Waiehu and Waihee, which were independent, belonging to no Moku, were called Na Poko, and have been formed into a district in modern times.

While some districts are regularly divided up into Ahupuaas averaging only a quarter of a mile in width and several miles in length, in others we find Ahupuaas like Honouliuli in Oahu, which contains over forty thousand acres, or the four great mountain lands of Hawaii, viz : Kahuku, Keauhou, Humuula and Kaohe, of which the first mentioned contains 184,000 acres, mostly on the mountains.

SUBDIVISIONS OF THE AHUPUAA.

The Ahupuaas were generally but not always subdivided into *Ilis*, each with its own name and carefully defined boundary. As was recognized by the decision of the Supreme Court in the Kaneohe case, in 1877, there were two kinds of *Ilis*, of which the first was a mere subdivision of the Ahupuaa for the convenience of the chief holding the same, who received its revenues from his *konohiki* or agent. The other class comprised the "Ili Kupono" or "Ku," which were independent of the Ahupuaa, and generally did not pay tribute to its chief. Thus the transfer of the Ahupuaa to a new chief did not affect the ownership of the *ku* contained within its limits.

In some cases these *Ilis* absorb the greater part of the Ahupuaa in which they are situated. A well-known case is the Ahupuaa of Waimea, Hawaii, of which the independent *Ilis* of Puukapu and Waikoloa form about nine-tenths. The same is true of the Ahupuaa of Waikelo in Ewa. In fact there are some *Ilis* that do not seem to be included in any Ahupuaa, as for instance, the *Ilis* of Honolulu, which is the name of a *locality*, but not of an Ahupuaa.

Another peculiarity of the *Ili*, on Oahu at least, is that it often consists of several distinct sections of land in different

parts of the Ahupuaa, which are called *leles*, i. e. "jumps." Thus many lands in Waikiki have their corresponding patches of taro land and forest in Waikiki and Manoa valleys. The taro lands of Wailupe are found in Palolo valley.

In Kalihi and also in the district of Ewa are Ilis which consist of eight or ten scattered *leles* apiece, included under one title. Each of these pieces may be spoken of either by its own individual name or by that of the whole Ili, which practice is a fruitful source of confusion.

The Ilis were again minutely subdivided, and many of the larger patches had individual names.

The patches cultivated exclusively for the chief were called *koele* or *hakuone*. In more recent times they were styled *Poalima*, (i. e. Fridays), from the fact that the tenants of the land were formerly obliged by law to labor for their chief on Fridays. The narrow strips of cultivated dry land, separated by ridges of stones are called *Moo*. These ridges or *iwi* frequently serve as boundaries between Ahupuaas and Ilis.

This minute subdivision of the land and the great multiplicity of local names, bear witness to the dense population that must have existed in ancient times.

ANCIENT SYSTEM OF LAND TENURE.

The nature of the ancient system of land tenure in this Kingdom is clearly stated in the "Principles adopted by the Board of Commissioners to quiet land titles," which were approved by the Legislative Council, Oct. 26th, 1846.

It is therein declared that "When the islands were conquered by Kamehameha I., he followed the example of his predecessors, and divided out the lands among his principal warrior chiefs, retaining, however, a portion in his own hands to be cultivated or managed by his own immediate servants or attendants. Each principal chief divided his lands anew

and gave them out to an inferior order of chiefs by whom they were subdivided again and again, often passing through the hands of four, five or six persons from the King down to the lowest class of tenants. All these persons were considered to have rights in the lands or the productions of them, the proportions of which rights were not clearly defined, although universally acknowledged.

All persons possessing landed property, whether superior landlords, tenants or sub-tenants, owed and paid to the King not only a land tax, which he assessed at pleasure, but also service which was called for at discretion, on all the grades from the highest down. They also owed and paid some portion of the productions of the land in addition to the yearly taxes. A failure to render any of these was always considered a just cause for which to forfeit the lands. The same rights which the King possessed over the superior landlords and all under them, the various grades of landlords possessed over their inferiors, so that there was a joint ownership of the land, the King really owing the *allodium*, and the persons in whose hands he placed the land, holding it *in trust*."

The tenures might be considered feudal, except that military service was not the principal condition on which they were held.

The land taxes mentioned above were really *rent*, and by ancient usage went to the King as his private income or revenue. The ideas of a Nation and of a Government as distinguished from the person of the King first began to be recognized in the Constitution of 1840. All lands forfeited for non-payment of taxes reverted to him. His consent was necessary for any transfers of real estate in the Kingdom, and for real mortgages also or for seizure of land for debt. (Old Laws, p. 179.)

When the labor tax first began to be regulated by law, every tenant was required to work one day in every week

(Tuesday) for the King, and one day (Friday) for the landlord. This tax was reduced in 1840 to 36 days in the year for the King, and an equal number for the landlords. But "those landlords who did not belong to the National Council, had to pay to the King one-tenth part of all the avails of their labor days." (Old Laws, p. 51.) The above arrangement illustrates the nature of the joint ownership explained above.

Ancient history affords many illustrations of these views. Judge Fornander states that "It had been the custom since the days of Keawenui-a-Umi on the death of a Moi (King) and the accession of a new one, to redivide and distribute the lands of the island between the chiefs and favorites of the new monarch." (Vol. 2, p. 300.) This custom was repeatedly the occasion of civil war.

But during the long reign of Kamehameha the leading families of chiefs enjoyed a greater degree of permanence and security in the possession of their lands than had been previously known, and on the accession of his son Liholiho no general redistribution of lands took place.

The common people were mere tenants at will, liable to be dispossessed at any time, and even to be stripped of their personal property at the will of their chiefs.

In some respects their condition was not improved by the advent of civilization and the cessation of civil wars.

Formerly the chiefs lived on their lands, personally attended to their cultivation, and took a strong interest in the prosperity of their vassals, on whom they had to depend in time of war. But when the centralizing policy of the Conqueror and the attractions of the capital had drawn them away from their lands, they were succeeded by rapacious agents or *konohikis*, and the old feudal ties gradually lost their power. Besides commerce introduced new luxuries and new wants which led the chiefs into debts which they had no means of paying except by increased exactions on their peo-

ple, until as David Malo expressed it, "Debt was far more oppressive than war."

Laws were passed in 1839 and 1840 to prevent evictions without cause, and the wanton seizure of the property of tenants, but proved to be totally inadequate.

Convinced that the ancient system was incompatible with their further progress in civilization, the King and chiefs resolved to separate and define the undivided shares which each individual held in the lands of the Kingdom.

After long and patient investigation it was finally settled that there were but three classes of persons having vested rights in land; 1st the King, 2d the chiefs, and 3d the tenants. The Land Commission decided that if the King should allow to the landlords one-third, to the tenants one-third, and retain one third himself, "he would injure no one unless himself."

The history of the several steps by which this division was carried out, and the work of centuries compressed into as many years, would be of the highest interest, but our limits will only admit of the barest outline.

THE LAND COMMISSION.

The "Act to organize the Executive Departments, which was passed in 1846, provided among other things for the appointment of a 'Board of Commissioners to quiet Land Titles,' which was to consist of five members, one of whom should be the Attorney-General of the Kingdom, and which was to exist for two years.

The Commissioners took the oath of office and organized February 11, 1846. Their powers, however, were repeatedly extended, and the Board was not finally dissolved until the 31st of March, 1855.

Full powers were conferred upon this Board as a court of record, to investigate and finally confirm or reject all claims

to land arising previously to December 10th, 1845. Its decisions were only subject to appeal to the Supreme Court, which had to be made within ninety days after the date of the Award by the Land Commission.

All persons were required to file their claims to land with this Board, or be *forever barred* of all rights to recover the same in the courts of justice.

And the titles of all lands which should not have been presented to this Board for confirmation on or before the 14th day of February, 1848, were declared to *belong to the Hawaiian Government.* (Vol. 2, p. 93.)

Aliens were not allowed to acquire any fee simple or alodial title to land, but this disability has since been removed by the Act passed July 10th, 1850, p. 146.

The Commissioners held their first meeting for regular business on the 4th of March, 1846. They worked with great zeal and energy, visiting every part of the Islands to meet the people, and give them an opportunity to present their claims. The rule had been laid down in advance that every piece of land should be surveyed at the claimant's expense before any award would be granted for it. The filing of claims, the taking of testimony, the surveying of boundaries, and the final awards, were the successive steps which had to be gone through with in every case.

When we consider that the number of claims confirmed amounted to 11,309, we can appreciate the herculean task imposed upon the commissioners, and it is not surprising that evidences of haste, that inconsistencies and imperfections can occasionally be found in their work. The character of the surveys made for the Commission will be described further on. The awards were all recorded in ten huge folios, which were deposited in the Land Office. The charges to be paid by the claimants were slight, amounting to from \$6.00 to \$12.00 for each of the claims of native tenants, commonly known as "kuleanas."

NATURE OF LAND COMMISSION AWARDS.

The Commissioners were not authorized to grant patents for land or to receive commutation.

Their duty was to ascertain the nature and extent of each claimant's rights in land, and to issue an Award for the same which is *prima facie* evidence of title "and shall furnish as good and sufficient a ground upon which to maintain an action for trespass, ejectment or other real action against any other person or persons whatsoever, as if the claimant, his heirs or assigns had received a Royal Patent for the same," by Act approved July 20th, 1854.

The holder of a Land Commission Award was entitled to receive a *Royal Patent* in free simple from the Minister of the Interior, on payment of the *commutation* to be agreed upon by His Majesty in Privy Council.

In regard to this last, the Commissioners themselves state that "The share of Government or the body politic, to be *commuted* for by any confirmed claimant wishing to obtain a fee simple title, this Board understands from the evidence before it, to be *one-third* part of the value of the land without improvements which third part of unimproved value, being paid by the confirmed claimant, should extinguish the private rights of the King in the land, and leave such claimant an *allodium*." On June 8th, 1847, it was resolved by the Privy Council, "That in all cases in which a Freehold Estate less than Allodial, in any *house or building lot*, has been or shall be hereafter awarded to any Hawaiian subject by the Board of Commissioners to quiet Land Titles, we approve of the principle of reducing the rate of commutation for the same from one-third to one-fourth of the present unimproved value, to be ascertained by a commission appointed for that purpose by said Board, and on payment of said commutation, of giving a patent in Fee Simple to the confirmed claimant." It was furthermore resolved "That in cases in which a Free-

hold Estate less than Allodial in any building lot, has been or shall be awarded to any person, whether domiciled alien or to any naturalized or native subject, it shall be optional with such person to pay for a certificate of that title in manner aforesaid, or to receive instead thereof a grant for the period of thirty years, subject to all the conditions of Leasehold Estates."

This option is inserted in some of the printed forms of Awards issued, (though it is not expressed in the original Awards on record), as follows: "He kuleana kona malalo o ke ano alodio, a e hiki no iaia ke hoololi no ke kuleana alodio mamuli o ke Kanawai, aia i kona manao, a i ole ia e loaa iaia ke kuleana no na makahiki he 30 aia i kona manao." This last clause has given rise to the common but entirely erroneous belief that the L. C. Awards are only valid for a period of 30 years.

THE "MAHELE" OR GREAT DIVISION.

During the first year or two the Land Commission was chiefly occupied with the claims of foreigners for land and with house lots in and near Honolulu, on account of the great difficulties to be overcome in making the division between the King, chiefs and the Government.

After years spent in ineffectual endeavors, the whole subject was brought up for final decision before the King and chiefs in Privy Council on the 11th of December, 1847, and a memorable discussion followed which was continued for several days.

The general principles laid down by the Land Commission were admitted by all, and the chiefs were willing to surrender to the King the greater part of the lands held by them in fief for the sake of obtaining an allodial title for the remainder, but they asked whether the Government would have a third interest in the lands left to them.

In other words, it was a question whether the Government commutation should be included in the first division between the landlords and the King, or whether the King and the Government should be regarded as distinct as far as property was concerned.

The conclusion finally arrived at was embodied in the following rules framed by Judge Lee and unanimously voted at the Privy Council held December 18th, 1847.

"Whereas it has become necessary to the prosperity of our Kingdom and the proper physical, mental and moral improvement of our people that the undivided rights at present existing in the lands of our Kingdom, shall be separated, and distinctly defined;

Therefore, We Kamehameha III., King of the Hawaiian Islands and His Chiefs, in Privy Council assembled, do solemnly resolve, that we will be guided in such division by the following rules:

1—His Majesty, our Most Gracious Lord and King, shall in accordance with the Constitution and Laws of the Land, retain all his private lands, as his own individual property, subject only to the rights of the Tenants, to have and to hold to Him, His heirs and successors forever.

2—One-third of the remaining lands of the Kingdom shall be set aside, as the property of the Hawaiian Government subject to the direction and control of His Majesty, as pointed out by the Constitution and Laws, one-third to the chiefs and Konohikis in proportion to their possessions, to have and to hold, to them, their heirs and successors for ever, and the remaining third to the Tenants, the actual possessors and cultivators of the soil, to have and to hold, to them, their heirs and successors forever.

3—The division between the Chiefs or the Konohikis and their Tenants, prescribed by Rule 2d shall take place, when-

ever any Chief, Konohiki or Tenant shall desire such division, subject only to confirmation by the King in Privy Council.

4—The Tenants of His Majesty's private lands, shall be entitled to a fee simple title to one-third of the lands possessed and cultivated by them; which shall be set off to the said Tenants in fee simple, whenever His Majesty or any of said Tenants shall desire such division.

5—The division prescribed in the foregoing rules, shall in no wise interfere with any lands that may have been granted by His Majesty or His Predecessors in fee simple, to any Hawaiian subject or foreigner, nor in any way operate to the injury of the holders of unexpired leases.

6—It shall be optional with any Chief or Konohiki, holding lands in which the Government has a share, in the place of setting aside one-third of the said lands as Government property, to pay into the Treasury one-third of the unimproved value of said lands, which payment shall operate as a total extinguishment of the Government right in said lands.

7—All the lands of His Majesty shall be recorded in a Book entitled "Register of the lands belonging to Kamehameha III., King of the Hawaiian Islands," and deposited with the Registry of Land Titles in the Office of the Minister of the Interior, and all lands set aside, as the lands of the Hawaiian Government, shall be recorded in a Book entitled "Register of the lands belonging to the Hawaiian Government," and fee simple titles shall be granted to all other allottees upon the Award of the Board of Commissioners to quiet Land Titles."

At the same time a committee was appointed to effect the division between the King as feudal suzerain and the chiefs his feudatories, before whom "all questions between the King and the chiefs were to be discussed, and settled by mutual consent of the King and each chief or landlord, after which the King and each Chief were to sign and seal the

settlement that should be made, never thereafter to be disturbed."

The work was commenced on the 27th of January, 1848, and conducted with such despatch that it was completed March 7th of the same year.

The book in which this division is recorded, is called the "Mahele Book" or Book of Division, and contains releases or quit claim deeds signed and sealed by the several chiefs to the King of the lands they respectively surrendered, and also releases signed by the King to the several chiefs of his feudal rights in the lands remaining to them as their shares.

But this "Mahele" did not of itself give the chiefs and landlords an allodial title, nor was the Government claim for commutation extinguished by it.

As is evident from the 6th and 7th rules above, it was further necessary for each of them to bring evidence of his "Mahele" before the Board of Commissioners to quiet Land Titles, to obtain its formal Award, which could afterwards be converted into an allodial title by payment to the Government of a commutation to be fixed by the King in Privy Council.

It is also evident, to quote from the decision of the Supreme Court "In the matter of the Estate of His Majesty Kamehameha IV.," in 1864, that the lands held by the King at the close of the Mahele "were not regarded as his private property strictly speaking. Even before his division with the landlords, a second division between himself and the Government was clearly contemplated, and he appears to have admitted that the lands he then held might have been subjected to a commutation in favor of the Government in like manner with the lands of the chiefs." "The records of the discussion in Council show plainly His Majesty's anxious desire to free his lands from the burden of being considered public domain, and as such subjected to the danger of con-

fiscation in the event of his islands being seized by any foreign power, and also his wish to enjoy complete control over his own property."

Besides he clearly perceived how desirable it was that there should be a public domain, the proceeds of which should go to the national treasury, and from which his subjects could purchase the lands which they needed.

Accordingly on the very day after the Mahele with his chiefs had closed, viz., the 8th of March, he proceeded "to set apart for the use of the Government the larger part of his royal domain, reserving to himself what he deemed a reasonable amount of land as his own estate."

To effect this he signed and sealed two instruments, both contained in the Mahele Book, by one of which he set apart for the use and benefit of the Government certain lands specified by name, and "reserved for himself his heirs and successors forever," the remainder of the lands surrendered to him in the Mahele, as his own private estate.

On the 7th of the following June, 1848, the Legislative Council passed the "Act relating to the lands of His Majesty the King and of the Government," which merely confirms and ratifies what had already been done by the King, and designates the several Crown Lands and Government Lands by name.

By this great Act of Kamehameha III., he showed his deep sympathy with the wants of his people, and set an illustrious example of liberality and public spirit. It remained for his chiefs to follow his example.

The second Division of lands took place during the summer of 1850, when most of the chiefs ceded a third of their lands to the Government, in order to obtain an allodial title for the remainder.

The whole transaction was a severe test of their patriotism, and reflects great credit on that Hawaiian aristocracy which

thus peacefully gave up a portion of its hereditary rights and privileges for the good of the nation.

The Privy Council accepted the proposed division August 26th, 1850, as full commutation of the Government right in the remainder of their lands.

AWARDS TO TENANTS.

In all Awards of whole Ahupuaas and Ilis the rights of Tenants are expressly reserved, "Koe na Kuleana o Kanaka." Besides the Act of August 6th, 1850, confirmed and amended July 11th, 1851, protects the common people in the enjoyment of the right to take wood, thatch, ki leaf, &c., from the lands on which they live, for their own private use, but not to sell for profit. They are also guaranteed the right to water and the right of way, but not the right of pasturage on the land of the Konohiki. (Hawaiian Reports, Vol. 2, p. 87.) These rights are embodied in Section 1477 of the Civil Code.

The same Act of August 6th, 1850, confirms the resolutions passed by the Privy Council on the 21st of December, 1849, granting fee simple titles, *free of all commutation* to all native tenants, for their cultivated lands and house lots, except in the towns of Honolulu, Lahaina and Hilo. For, as is stated by the Land Commission, "between the ownership of lands for cultivation, and mere building lots, there are often broad lines of distinction. Mere building lots were never bestowed by the King for the purpose of being given out to tenants, as was uniformly the case with lands suitable for cultivation. It follows therefore that (with some exceptions) there is no third class of persons, having the rights of lords over tenants." Hence the Awards for town lots were subject to commutation, "there being no Superior Lord or Chief over them, whose Ahupuaa or Ili they were included in, and whose commutation covered theirs." (See Decision in case of C. C. Harris vs. Commissioners of Crown Lands in 1877.)

As was stated above, the commutation fee for town lots is *one-fourth* of the unimproved value of the land.

It may be observed here that Kuleanas in default of heirs "revert to the owner of the Ahupuaa or Ili of which the escheated Kuleana formed a part," by a law passed July 6th, 1866. But town lots escheat to the Government. (Hawaiian Reports, Vol. 3, p. 332.)

As the rights of the Government extend to *high water mark*, the Land Commission generally declined to grant Awards below that line, or to award fisheries by metes and bounds, though fish ponds were awarded by survey. (See Award to Kahanaumaikai, Vol. 10, p. 58.)

The only exceptions to this principle are found in and around the harbor of Honolulu.

KONOHIKI AWARDS.

To lighten the arduous labors of the Land Commissioners and hasten the settlement of titles, they were empowered by the Act passed June 19th, 1852, to grant titles to Konohikis for whole "Ahupuaas or Ilis received by them in the Mahele of 1848, *by their proper names without survey.*"

In fact the greater part of this class of lands were awarded in this way. As many of these Konohikis had failed to present their claims before the Land Commission previous to the 14th day of February, 1848, and had consequently forfeited their lands, a law was passed for their relief August 10th, 1854, giving them an opportunity to present their claims between that date and the 1st of November following. As before stated, the Board of Commissioners to quiet Land Titles was finally dissolved on the 31st of March, 1855.

Even then a second Act had to be passed August 24th, 1860, "For the relief of certain Konohikis," whose names appear in the Mahele Book of 1848, but who had failed to present their claims before the Land Commission. As the

Commission had long ceased to exist, the Minister of the Interior was empowered to grant Awards to claimants of this class, provided they presented their claims before the last day of June, 1862; and those who failed to do so were declared to be "*forever barred*, and their rights under the Mahele Book to have *reverted to the Government*."

About 70 Awards were issued under the provisions of this Act, which are styled "*Mahele Awards*," and form a distinct series. The Index of Land Commission Awards, classified and arranged according to locality by J. H. Smith, formerly one of the Commissioners, is an invaluable work, and must have cost its author immense labor.

A ROYAL PATENT

In confirmation of Land Commission Award, by Section 43 of the Civil Code, "shall issue under the Great Seal of the Kingdom to any holder of an award from the Board of Commissioners to quiet Land Titles, for any land in which he may have commuted the Government rights." The fees aside from commutation are moderate, amounting to about \$6.00 for each Patent.

It was decided by the Supreme Court in 1877, (in the case of J. H. Bruns vs. the Minister of the Interior,) that the Minister of the Interior may lawfully issue a Royal Patent for a *portion* of a L. C. Award, "in the name of the person to whom the original Award was made." But "it must appear by the literal agreement of the metes, bounds and descriptions of the survey in the petition with that in the award, so far forth as the lot in question is bounded by the exterior lines of the Award, that it conforms thereunto."

By the 10th Section of an Act relating to the Commission of Boundaries, passed August 23d, 1862. "The Minister of the Interior is forbidden to issue any patent in confirmation of an Award by name made by the Commissioners to quiet

Land Titles, without the *boundaries being defined* in such patent, according to the decision of some Commissioner of Boundaries or of the Supreme Court on appeal."

The total number of Royal Patents in confirmation of L. C. Awards issued previous to January 1st, 1882 was 7570.

THE COMMISSION OF BOUNDARIES

Was established by the aforesaid Act passed August 23d, 1862. As was stated above, a large number of Ahupuaas and Ilis had been awarded by their names only without survey.

As the Land Commission had ceased to exist, it became necessary to provide the means of legally settling the boundaries of these lands, and of a few which had been patented by name, and that too "before the testimony of witnesses should be lost by reason of death."

This Commission consisted at first of two persons in each Gubernatorial District. In case they could not agree "the Police or District Justice of the District in which the disputed boundary is situated" was to be umpire between them.

This arrangement, as might have been expected, did not work well, and by an Act passed July 27th, 1866, the late G. M. Robertson, First Associate Justice of the Supreme Court, was appointed sole Commissioner of Boundaries for the Kingdom. Two years later by an Act passed June 22d, 1868, the number of Commissioners was increased to four, one for each Judicial Circuit.

"All owners of Ahupuaas or Ilis of land within this Kingdom, whose lands have not been awarded by the Land Commission, patented, or conveyed by deed from the King, by boundaries described in such award, patent or deed," were required within four years from the passage of the Act, to file with the Commissioners of their district, "an application

to have the boundaries of said land decided and certified to by the Commissioners." "The application shall state the name of the land, the names of the adjoining lands, and the names of the owners of the same where known, and it shall also contain a general description, by survey or otherwise, of the boundaries as claimed."

It is "the duty of the Commissioner on receipt of such application to notify the owner or owners of the land and also those of the adjoining lands, of the time when he will be prepared to hear the case." "Upon giving a decision the Commissioner shall therein describe the boundaries decided on by survey, by natural topographical features or by permanent boundary marks or partly by each," * * * "but he shall in no case alter any boundary described by survey in Royal Patent, in deed from the King, or in Land Commission Award."

"Any party deeming himself aggrieved by the decision of any Commissioner of Boundaries, may appeal therefrom to the Circuit Court of the Island on which such hearing is had or to the Supreme Court; * * * provided, however, that any party desirous of so appealing shall give notice of the same to the Commissioner within sixty days after the rendition of his decision." This term was shortened to thirty days by the Act of June 22d, 1868.

The term of the continuance of the Commission of Boundaries has been repeatedly extended, and now stands extended to August 23d, 1886.

By the Act of July 13th, 1874, the Commissioners of Boundaries are empowered "to decide and certify the Boundaries of *portions* of Ahupuaas, and *portions* of Ilis and other denominations of lands."

By an Act passed September 25th, 1876, it is made the duty of the several Commissioners of Boundaries "to deposit in the office of the Minister of the Interior a certified copy of

all certificates of Boundaries issued by them within thirty days after the issuing thereof."

The work has progressed slowly from various causes, among which may be reckoned the indifference of many owners of land, and the difficulty and expense attending surveys.

GOVERNMENT LANDS.

In 1842, Government property began to be set apart by itself, and a Treasury Board was appointed, (Old Laws, p. 179 and 199), but the Government still continued to have an undivided and undefined claim in all land in the Kingdom till the "Mahele."

The great mass of the Government lands consists of those lands which were surrendered and made over to the Government by the King, Kamehameha III., and which are enumerated by name in the Act of June 7th, 1848.

To these must be added the lands ceded by the several chiefs in lieu of commutation, those lands purchased by the Government at different times, and also all lands forfeited to the Government by the neglect of their claimants to present their claims within the period fixed by law. (See p. 93, Vol. 2, Statute Laws, and p. 27, Laws of 1860.)

The Land Office was created by the "Act to organize the Executive Departments" in 1846, and the Minister of Interior was thereby authorized to sell or lease the Government lands on vote of the Privy Council, approved by the King, (p. 100, Vol. 1, Statute Laws). In the 42d Section of the Civil Code, the words "Cabinet Council" are substituted for "Privy Council."

The Royal Patents issued to purchasers of Government lands are styled "Grants," and are recorded by themselves in a distinct series of volumes from the Royal Patents in Confirmation of Land Commission Awards. Mistakes are often made by confounding the two series of patents.

By an Act approved July 13th, 1874, it is enacted that "No sale of one land or lot exceeding *five thousand dollars* in value, shall be made without the consent of the King and a majority of the Privy Council."

By an Act approved September 25th, 1876, "All sales or leases of Government lands and portions of land exceeding *three hundred dollars* in value, shall be made at public auction after not less than thirty days notice by advertisement in two or more newspapers, in both the Hawaiian and English languages. All such sales shall be made at the door of the Government House, at Honolulu." (p. 118, Laws of 1876.)

In the Act of June 7th, 1848, referred to above, 52 *I'lis* in Honolulu, Kalihi and Waikiki, were set apart by name, in accordance with ancient custom, for the support of the garrison of the Fort at Honolulu, as "Fort Lands."

As early as 1847 a number of sales took place of lots in Honolulu, Kulaokahua plain, Manoa and Makawao. On the 11th of July, 1851, an Act was passed confirming certain resolutions of the Privy Council of the previous year, which ordered "that a certain portion of the Government lands on each island should be placed in the hands of special agents to be disposed of in lots of from one to fifty acres in fee simple, to residents only, at a minimum price of fifty cents per acre." Accordingly land agents were appointed in the different districts to receive and forward applications; to collect payment for the land and pay it in at the Interior Office, and to attend to the surveying of the Grants. (Laws of 1851, p. 52.) At the same time it was ordered that the so-called "Fort Lands" should be surveyed and sold in lots at auction, after fifty acres had been reserved for the "Royal Agricultural Society," and after the *kuleanas* contained in the said lands should have been surveyed out," whether the same had been entered at the Land Commission or not." A distinct series of L. C. Awards was issued for these kuleanas marked F. L. (Fort Land) to

distinguish them from other Awards, and Royal Patents were granted for such kuleanas *free of charge* to the awardees. (Laws of 1851, p. 28.) The water sources of Kunawai and certain other places were also reserved by an Act approved November 2nd, 1863.

Between the years 1850 and 1860, nearly all the desirable Government land was sold, generally to natives. The portions sold were surveyed at the expense of the purchaser.

SCHOOL LANDS.

By an Act passed July 9th, 1850, it was enacted that about "One twentieth part of all the lands then belonging to the Government should be set apart for the general purposes of Education." On the 23d of the following December, certain lands and school sites were designated and set apart by the Privy Council for these purposes.

By the third section of the above mentioned Act, the Minister of Public Instruction was authorized "to dispose by sale, lease, or otherwise of any of the lands which have been or hereafter may be set apart for the general purposes of Education."

The same authority is given to the Board of Education by section 749 of the Civil Code, which was re-enacted in Section 32nd of the Act approved January, 10th, 1865, "To regulate the Bureau of Public Instruction," (Laws of 1864-65, p. 45.) Under this authority most of the School lands have been sold in the same manner as other Government lands, and Royal Patents or "Grants," signed by the King and countersigned by the Minister of the Interior, have been issued to the grantees, as is expressly provided in the Act approved August 13th, 1880. The sales of Government lands have always been made by metes and bounds, and the original surveys and plans placed on file, except in the case of certain Ahupuaas sold by the Board of Education, for which Grants *by name* have been issued.

The total number of Grants issued before January 1st, 1882, was 3,312.

It may be added here that "All fishing grounds appertaining to any Government land, or otherwise belonging to the Government, excepting only ponds," were "granted to the people for the free and equal use of all persons," May 15th, 1851. (Laws of 1851, p. 23.) The same privilege is confirmed by Section 384 of the Civil Code.

CROWN LANDS.

The term "Crown Lands" is here applied to those lands reserved by Kamehameha III, March 8, 1848, "for himself, his heirs and successors forever," as his private property. To these may be added a few lots in Honolulu, and Lahaina, awarded to him by the Land Commission in Award 10806.

It is admitted by all that both Kamehameha III and his successors dealt with these lands as their private property, selling, leasing or mortgaging the same at pleasure. These royal deeds of sale constitute titles equally valid with Royal Patents.

At the death of Kamehameha IV, it was decided by the Supreme Court that under the above mentioned instrument executed by Kamehameha III, reserving the Crown Lands, and under the confirmatory Act of June 7th, 1848, "the inheritance is limited to the *successors to the throne*," "the wearers of the crown which the conqueror had won," and that at the same time "each successive possessor may regulate and dispose of the same according to his will and pleasure as private property, in like manner as was done by Kamehameha III." (Hawaiian Reports, Vol. 2nd, p. 725.)

Afterwards an Act was passed January 3, 1865, "to relieve the Royal Domain from encumbrances and to render the same inalienable."

This Act provided for the redemption of the mortgages on

the estate, and enacted that the remaining lands are to be "henceforth *inalienable* and shall descend to the heirs and successors of the Hawaiian Crown forever," and that "it shall not be lawful hereafter to lease said lands for any term of years to exceed thirty." "The Board of Commissioners of Crown Lands shall consist of three persons to be appointed by His Majesty the King, two of whom shall be appointed from among the members of His Cabinet Council, and serve without remuneration, and the other shall act as Land Agent, and shall be paid out of the revenues of the said lands, such sum as may be agreed to by His Majesty the King."

UNASSIGNED LANDS.

There are certain lands, mostly on the Island of Hawaii, which were overlooked in the "Mahele" of 1848, and for which no title exists. As all private claims not brought before the Land Commission were declared to be forever barred, and as even claims under the Mahele Book which were not presented before June 30th, 1862, have reverted to the Government by law, no private claim to such lands can be entertained.

The question remains whether they belong to the class of Government lands or to that of Crown Lands or to the lineal heirs of Kamehameha III.

This question has not been brought before the courts for settlement, and it is one on which legal authorities differ.

It is admitted by all that under the ancient feudal system the *allodium* of all land belonged to the King, not, however, as an individual, but "as the head of the nation, or in his corporate right," in the language of the Land Commission. The Constitution of 1840 declares that the land of the Kingdom was not the private property of Kamehameha I. "It belonged to the chiefs and people in common, of whom Kamehameha I. was the head, and had the management of

the landed property." This principle was fully recognized by Kamehameha III. in the division which he made between his private lands and those of the Government. But opinions differ as to whether the remaining lands overlooked in this division belonged to him as an individual Chief or in his official capacity as head of the Government.

As we have seen above, those private claims which were forfeited by neglect to present them within the time prescribed by law, lapsed to the Government and not to the King's private estate.

Furthermore it appears from the record that during the reign of Kamehameha III., the lands in question were treated as Government property, and that many sales from these lands were made by the Government, patents for which were signed by him.

These facts have peculiar weight, as they indicate the views held on this subject by the very parties who executed the original "Mahele," and it must be admitted that Kamehameha III. and the able men who composed his Council and who organized this Government, probably understood their own work better than did those of a later generation.

"DOMESDAY BOOK."

It is to be wished that a complete register might be published of all the original titles to land in the Kingdom, similar to the "Domesday Book" compiled for William the Conqueror. The valuable "Index of Land Commission Awards" compiled by the late J. H. Smith has been referred to above. If a new revised edition of it is published another column should be added, containing the numbers of the Royal Patents issued in confirmation of L. C. Awards to a certain date. A similar index of Grants arranged according to locality, and brought up to the same date, together with complete lists of Crown Lands, should be published for the

convenience both of the Government and of private owners of land throughout the Kingdom.

CHARACTER OF THE EARLY SURVEYS.

First in order are the old surveys made under the direction of the Land Commission, and commonly known as "kuleana" surveys. These had the same defects as the first surveys in most new countries. These defects were in great part owing to the want of any proper supervision. There was no Bureau of Surveying, and the President of the Land Commission was so overwhelmed with work that he had no time to spare for the superintendence of the surveying. As has been truly said, there was little money to pay out, and little time to wait for the work. Political reasons also added to the haste with which the work was pushed through, and barely completed before the death of Kamehameha III.

No uniform rules or instructions were given to the surveyors employed, who were practically irresponsible. Few of them could be regarded as thoroughly competent surveyors, while some were not only incompetent but careless and unscrupulous. The result was that almost every possible method of measurement was adopted. Some used 50 feet chains, and others the four pole chain divided into links; some attempted to survey by the true meridian, others by the average magnetic meridian, while most made no allowance for local variations of the needle. There are some surveys recorded, which were made with a ship's compass or even a pocket compass. Few of them took much pains to mark corners or to note the topographical features of the country. Rarely was one section or district assigned to one man. It is said that over a dozen were employed in surveying Waikiki, for instance, not one of whom knew what the other surveyors had done, or tried to make his surveys agree with theirs, where they adjoined one another. As might be

expected, overlaps and gaps are the rule rather than the exception, so that it is generally impossible to put these old surveys together correctly on paper, without ascertaining their true relative positions by actual measurements on the ground.

The Board of Commissioners to quiet Land Titles were empowered by the law of August 6th, 1850, not only "to define and separate the portions of land belonging to different individuals," but "to provide for an equitable exchange of such different portions where it can be done, *so that each man's land may be by itself.*"

This, however, was rarely done, and the kuleanas very often consist of several sections or "apanas" apiece, scattered here and there in the most irregular manner imaginable.

No general rules were laid down in regard to the size of kuleanas, though mere *house lots* were limited to one quarter of an acre by the Act just cited, Section 5.

The consequence was that the responsibility was mainly thrown upon the surveyors, and there was the greatest variety of practice among them in different districts. The Act above mentioned provided that fee simple titles should "be granted to native tenants for the lands they occupy and improve."

This was differently interpreted by different surveyors, so that in fact the "kuleanas" vary from one to forty acres in extent.

General maps of whole districts or even ahupuaas, exhibiting the exact location of all the different claims contained within them, were scarcely thought of, and hardly could have been made with the inferior instruments and defective methods used by most of the kuleana surveyors of that time.

SURVEYS OF GRANTS

Were of a similar character to those of kuleanas. Until recently it was not the policy of the Government to have

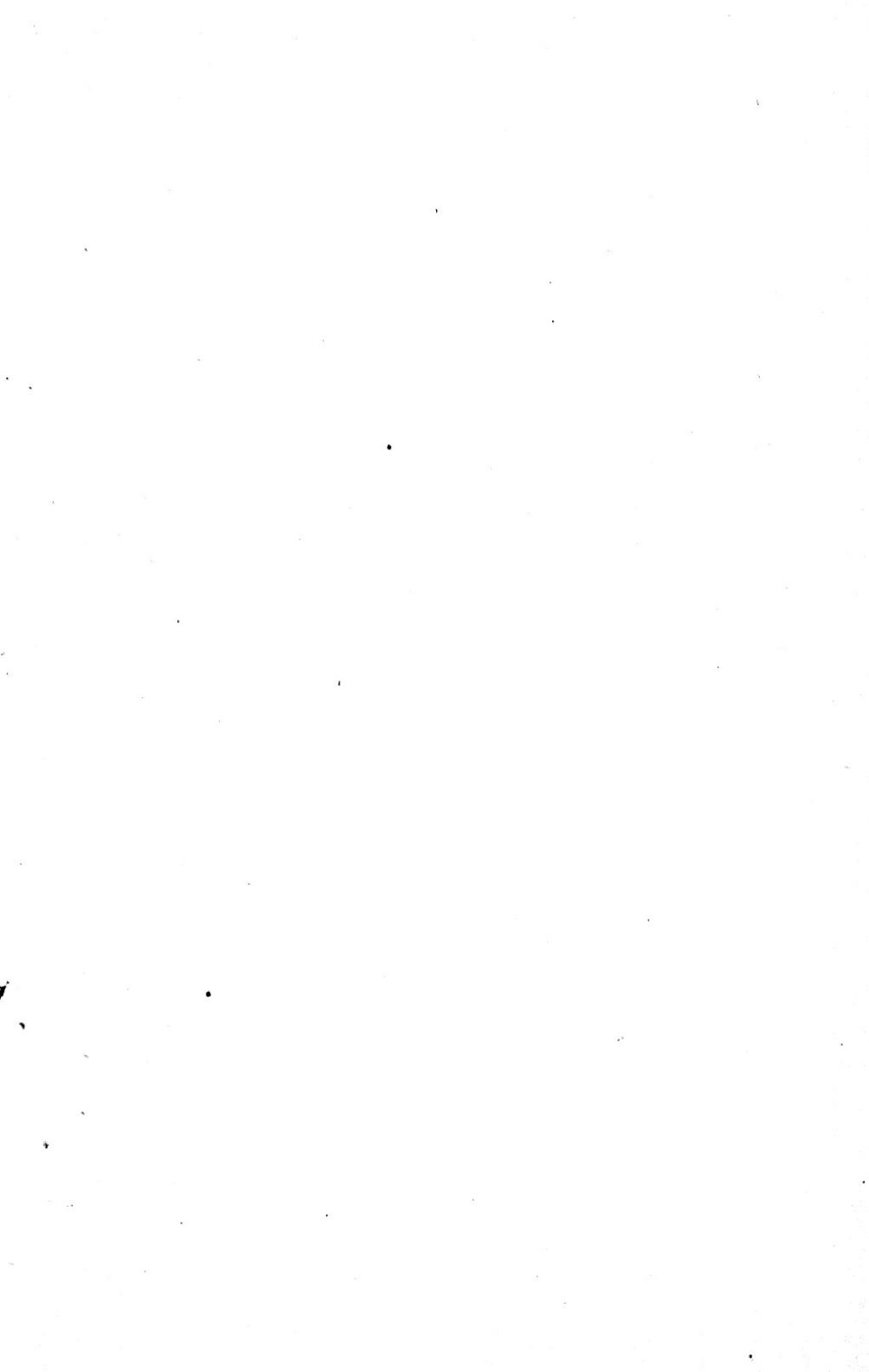
Government lands surveyed as wholes, or to have their boundaries settled. Portions of Government land sold to private persons were surveyed at the expense of the purchaser. It was seldom the case that an entire "ahupuaa" was sold at once. The pieces sold were of all sizes and shapes, sometimes cutting across half a dozen ahupuaas, and were generally surveyed without reference to the surveys of adjoining land sales or awards.

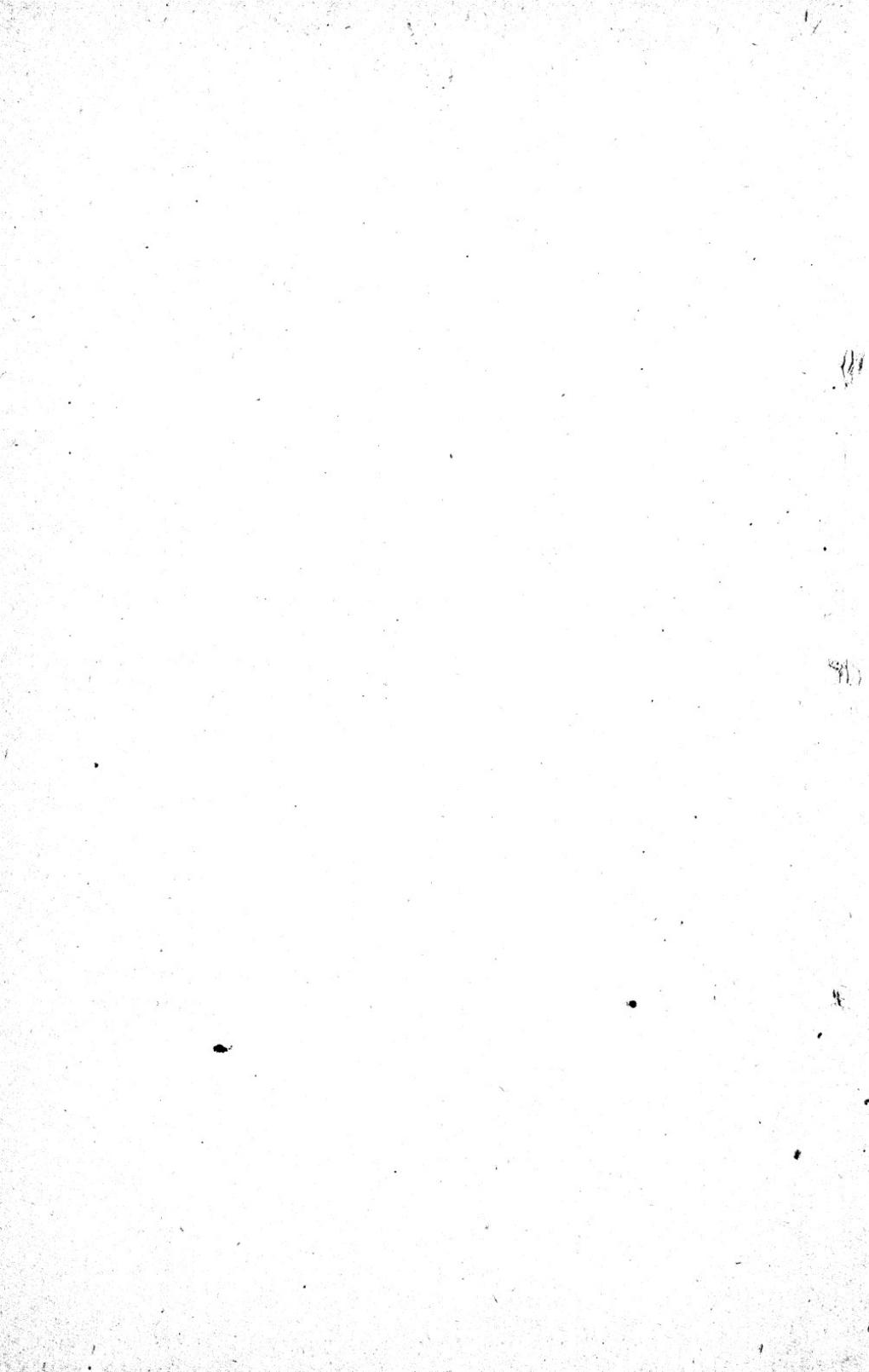
Hence most Government lands at the present time consist of mere remnants left here and there, and of the worthless and unsalable portions remaining after the rest had been sold. It follows that even supposing all the outside boundaries of a Government land to have been surveyed and duly settled by the Commissioner of Boundaries, it would still be necessary to locate on the ground all the Grants and Awards contained within the land in question, in order to ascertain how much of it is left.

Nothing short of a general survey of the country will bring to light all these facts, will exhibit the Government lands in their true position in relation to other lands, and enable the Minister of the Interior as well as applicants for land to judge of their actual value. It was considerations like these which induced the then Minister of the Interior, Dr. Hutchison, to institute the Government Survey in 1871.

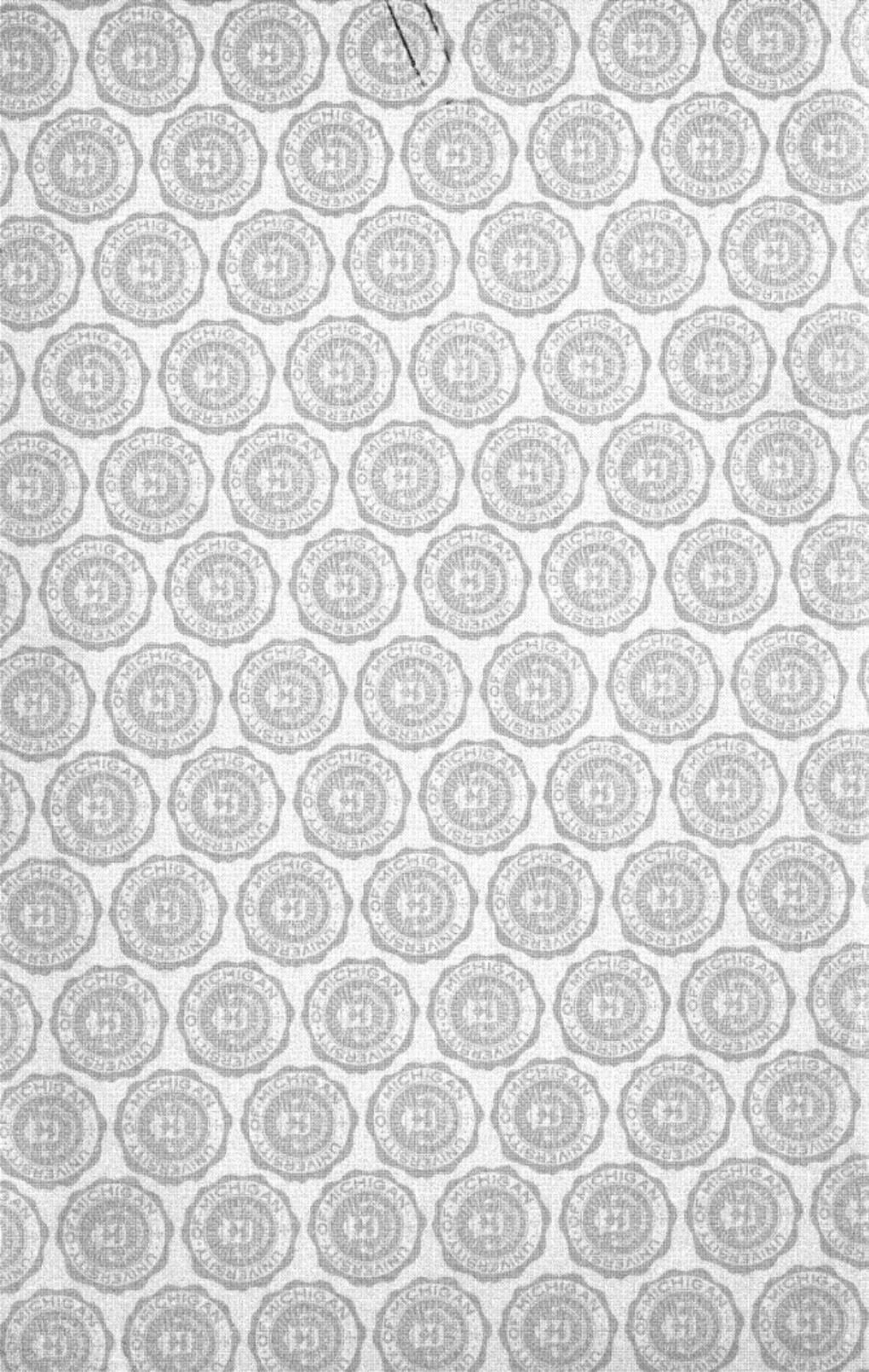
In order to give an account of the character and objects of the survey, and of the work which has been done by it, I herewith submit the unpublished report for 1874, and a continuation of the history of the survey to the present time.

W. D. ALEXANDER,
Superintendent of Government Survey.









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